



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-807

Certain Digital Photo Frames and Image Display Devices and Components Thereof

Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, and has issued a limited exclusion order directed against infringing products of the following respondents previously found in default: Nextar Inc. (“Nextar”) of La Verne, California; WinAccord Ltd. of Taipei, Taiwan and WinAccord U.S.A., Inc. of San Jose, California (collectively, “the WinAccord respondents”); Aiptek International Inc. (“Aiptek”) of Hsinchu, Taiwan; and Pandigital, Inc. (“Pandigital”) of Dublin, California (collectively, “the defaulting respondents”). The Commission has also issued cease and desist orders directed against these defaulting respondents.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the

Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 27, 2011, based on a complaint filed by Technology Properties Limited, LLC ("TPL") of Cupertino, California. 76 *Fed. Reg.* 59737-38. The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 ("the '623 patent"); 7,162,549; 7,295,443; and 7,522,424. The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named twenty respondents including Nextar; the WinAccord respondents; Aiptek; Pandigital; Action Electronics Co., Ltd. ("Action") of Taoyuan County, Taiwan; Aluratek, Inc. ("Aluratek") of Tustin, California; Audiovox Corporation ("Audiovox") of Hapauge, New York; CEIVA Logic, Inc. ("CEIVA") of Burbank, California; Circus World Displays Ltd. ("Circus") of Niagra Falls, Canada; Coby Electronics Corporation ("Coby") of Lake Success, New York; Curtis International, Ltd. ("Curtis") of Ontario, Canada; Digital Spectrum Solutions, Inc. ("Digital Spectrum") of Irvine, California; Eastman Kodak Company ("Eastman Kodak") of Rochester, New York; Mustek Systems, Inc. ("Mustek") of Hsinchu Taiwan; Royal Consumer Information Products, Inc. ("Royal Consumer") of Somerset, New Jersey and Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York (collectively, "the Sony respondents"); Transcend Information, Inc. ("Transcend") of

Taipei, Taiwan; and Viewsonic Corporation (“Viewsonic”) of Walnut, California. The complaint and notice of investigation were served on all respondents. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney participated in the investigation.

On November 10 and 30, 2011, respectively, the Commission determined not to review initial determinations (“IDs”) issued by the presiding administrative law judge (“ALJ”) terminating the investigation as to Coby and Aluratek based on settlement agreements. On December 21, 2011, the Commission determined not to review an ID terminating the investigation as to Circus based on a settlement agreement. On January 25, 2012, the Commission determined not to review an ID terminating the investigation as to Curtis based on a settlement agreement. On February 10 and 23, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to Royal Consumer and Viewsonic based on settlement agreements. On March 16, 2012, the Commission determined not to review an ID terminating the investigation as to CEIVA based on a settlement agreement. On April 11, 2012, the Commission determined not to review IDs terminating the investigation as to Eastman Kodak and Mustek, respectively, based on consent order stipulations. On May 24, 2012, the Commission determined not to review an ID terminating the investigation as to Audiovox based on a settlement agreement. Also, on May 24 and 29, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to the ’623 patent with respect to Pandigital, and terminating Digital Spectrum, based on consent order stipulations. On June 20, 2012, the Commission determined not to review an ID terminating the investigation as to Action based on a consent order stipulation. On July 26, 2012, the Commission determined not to review an ID terminating the investigation as to Transcend based on a consent order stipulation.

On October 3, 2012, the Commission determined not to review an ID terminating the investigation as to the Sony respondents based on a consent order stipulation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding Nextar, the WinAccord respondents, and Aiptek in default, pursuant to 19 CFR 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13 and/or 15 to show cause why it should not be found in default. On January 3 and 9, 2012, respectively, the Commission determined not to review the IDs finding Nextar, the WinAccord respondents, and Aiptek in default. The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) were met with respect to Aiptek, Nextar, and the WinAccord respondents. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 CFR 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47, directing Pandigital to show cause why it should not be found in default and in violation of section 337 pursuant to 19 CFR 210.17 because it did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued an ID finding Pandigital in default and in violation of section 337. He also extended the target date in this investigation to March 7, 2013.

On December 7, 2012, the Commission determined not to review the ID finding Pandigital in default and in violation of section 337. The Commission also requested public

briefing on remedy, the public interest, and bonding with respect to Pandigital, Aiptek, Nextar, and the WinAccord respondents and requested that TPL address certain issues related to remedy and bonding. 77 FR 74220-21 (Dec. 13, 2012). On December 21, 2012, TPL submitted responsive briefing including a proposed limited exclusion order directed to the covered products of Pandigital, Aiptek, Nextar, and the WinAccord respondents and cease and desist orders directed to each of the defaulting respondents.

The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting: (1) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Pandigital or one of the WinAccord respondents, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns; (2) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Nextar or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns; and (3) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Aiptek or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. Appropriate relief also includes cease and

desist orders prohibiting: (1) Pandigital or either of the WinAccord respondents from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent; (2) Nextar from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent; and (3) Aiptek from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d), (f), and (g)(1) (19 U.S.C. 1337(d), (f), and (g)(1)) do not preclude issuance of the limited exclusion order or the cease and desist orders. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c), 210.17, 210.41, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c), 210.17, 210.41, and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

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